



[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2016-0111]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From the International Institute of Towing and Recovery.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on an application for exemption from the International Institute of Towing and Recovery (IITR) (on behalf of the Towing and Recovery Association of America (TRAA) and the towing and recovery industry) to allow commercial motor vehicle operators to secure automobiles, light trucks, and vans using a total of four tiedowns – two fixed and two adjustable – instead of using a minimum of two tiedowns, both of which need to be adjustable. While the Federal Motor Carrier Safety Regulations (FMCSRs) require each tiedown, or its associated connectors or attachment mechanisms, to be adjustable, IITR believes that the use of four tiedowns instead of the two that are minimally required by the FMCSRs to secure automobiles, light trucks, and vans will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption even though two of the four tiedowns are not adjustable. IITR is requesting the temporary exemption in advance of petitioning FMCSA to conduct a rulemaking to amend 49 CFR 393.112.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2016-0111 using any of the following methods:

- Web site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the Federal electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- Hand Delivery: Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday-Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the “Public Participation” heading below. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the “Privacy Act” heading for further information.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Public participation: The <http://www.regulations.gov> Web site is generally available 24 hours each day, 365 days each year. You may find electronic submission and retrieval help and guidelines under the “help” section of the <http://www.regulations.gov> Web site as well as the DOT’s <http://docketsinfo.dot.gov> Web site. If you would like notification that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mrs. Amina Fisher, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, (202) 366-2782, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA– 21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule (69 FR

51589) implementing section 4007. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

IITR's Application for Exemption

IITR has applied for an exemption from 49 CFR 393.112 to allow the use of two non-adjustable tiedowns in addition to the two adjustable tiedowns currently required. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.112 of the FMCSRs, "Must a tiedown be adjustable?" states "Each tiedown, or its associated connectors, or its attachment mechanisms must be designed,

constructed, and maintained so the driver of an in-transit commercial motor vehicle can tighten them.” Section 393.128, “What are the rules for securing automobiles, light trucks and vans?”, states in paragraph (b)(1) that “Automobiles, light trucks, and vans must be restrained at both the front and rear to prevent lateral, forward, rearward, and vertical movement using a minimum of two tiedowns.”

In its application, IITR states:

The use of chains as a tiedown securement has been an industry standard for many years. While there are other methods of securement many operators believe that properly rated chains are the best option for securement of heavy loads. A tiedown chain is secured to the vehicle at one end of the load, adjusted for length and then dropped into a keyhole slot. Then at the other end of the vehicle, tiedowns are secured, and then the tension for the cargo securement is adjusted by using a chain binder ratchet assembly. Tightening one end of the assembly also tightens the other end.

As an example of current industry practice, once the disabled vehicle has been winched forward onto the carrier bed a safety chain is installed to prevent rollback. Two tiedown chains are then attached to the rear of the disabled vehicle, dropped through two of the keyhole slots at the rear of the carrier bed, and snugged up or adjusted by using the winch to remove any slack in the chains. Then two chains or straps are attached and ratcheted to secure the front of the vehicle. Tightening the two front tiedowns subsequently tighten the two rear tiedowns.

49 CFR 393.112 states that each tiedown, or its associated connectors, or its attachment mechanisms must be designed, constructed, and maintained so the driver of an in-transit commercial motor vehicle can tighten them. Looking at the definition of a tiedown and “its associated connectors” and the method by which a disabled vehicle is secured to the carrier bed, each chain or tiedown is completely adjustable. Specifically in the example above, when a chain is dropped into a keyhole slot the length of the chain is easily adjustable and the tension can be further adjusted by either the winch, tilt of the bed, or a chain binder or ratchet assembly – by tightening the front end of the tiedown assembly the rear is also tightened.

As a further note, using only two chains as prescribed in 393.128, one at the front and one at the rear, may not meet the cargo securement performance requirements of 0.8g as described in 393.102, particularly in hard stop or crash situations.

The towing and recovery industry faces the continuing challenge of operating in the safest and most expeditious manner. Following the current roadside enforcement interpretations of 393.112 and 393.128 and how they are being enforced will push tow operators into using one chain on the front and one on the rear of the disabled vehicle, which the industry considers to be a “shortcut”. Using only two chains in this manner could easily result in the disabled vehicle moving on the bed, leading to possible loss of control of the truck, leading to possible injuries and/or death.

The exemption would apply to all car carrier-type tow trucks. IITR believes that using two non-adjustable tiedowns in addition to the two adjustable tiedowns minimally required will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on IITR’s application for an exemption from 49 CFR 393.112. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the “Addresses” section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: September 15, 2016

Larry W. Minor

Associate Administrator for Policy

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